

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1133 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----

JETHALAL DEVJI @ JETHIO KOYAL KHAPANDI KHARWA

Versus

STATE OF GUJARAT

-----

Appearance:

MR GONDALIA FOR YOGESH S LAKHANI for Petitioner

MR J.C.GOHEL, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

-----

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 09/02/99

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India, show cause notice at Annexure 'A' under section 59 (1) of the Bombay Police Act issued on 23.6.1998, externment order at Annexure 'B' passed on 29.8.1998 and the order of the appellate authority at Annexure 'C' passed on 16.11.1998 are under challenge with the prayer that the show cause notice and the impugned orders be quashed.

The brief facts are that a show cause notice under section 59 (1) of the Bombay Police Act was issued to the petitioner to show cause why he should not be externed for a period of two years from Junagadh, Amreli , Rajkot and Porbandar districts in view of the anti-social activities reflected in the statements of two confidential witnesses and two registered criminal cases , one in the year 1995 and the other in the year 1998. The petitioner appeared and submitted his reply to the show cause notice and also examined five witnesses in defence and tendered 32 certificates showing his good character. The externment authority passed the impugned order. The appeal preferred by the petitioner was dismissed by the appellate authority. It is therefore, this petition.

It seems apparently that against seven persons on the same day viz. on 23.6.1998 , show cause notices under section 59 (1) of the Bombay Police Act were issued with minor alterations, here and there. Strangely enough, externment order was also passed in all the cases on one day viz. on 29.8.1998 and the appellate authority also passed the order on one day viz. 16.11.1998. Remaining six writ petitions have been allowed by this court and there is no reason to take a different view in this writ petition. Reasons are as under :

It appears that the show cause notice was issued in a mechanical manner without application of mind to the material on record. One vital material was statements of two confidential witnesses .But from the show cause notice, it is not known what these witnesses stated either before the sponsoring authority or before the externing authority. Only this much is disclosed that the witnesses are residing in Veraval and they are knowing the petitioner very well and their statements corroborated the activities of the petitioner. What activities of the petitioner were illegal is not to be found in the show cause notice nor the period and the area to which these activities had reference ,is disclosed. Arriving at the subjective satisfaction on such vague material can safely be said to be an instance of non-application of mind by the externing authority.

Another instance of non-application of mind is that in the show cause notice as well as in the externment order, there is a mention that the petitioner committed offences punishable under Chapters 16 and 17 of the IPC. Two registered cases do not form part of Chapter 17 of the IPC. The offences described in these two cases are prima

facie punishable under Chapter 16. Thus, mention of Chapter 17 shows mechanical application of mind by the externing authority and an attempt was made by him in the counter affidavit to state that the petitioner committed offences under Chapter 17 of the IPC, but no description is to be found in para 3 (d) of his counter affidavit as to when these offences were committed. Even statements of two confidential witnesses cannot be pressed in service to supplement this defect because there is nothing in the show cause notice to disclose the period during which the activities were observed by these two witnesses. Thus, mechanical recital of Chapter 17 was made in the show cause notice as well as in the externment order. This would render the show cause notice and the externment order invalid and consequence of it is that the order of the appellate authority confirming the order of externing authority is also rendered invalid, inasmuch as despite clear observation by the appellate authority that it is a fact that no offence under Chapter 17 of the IPC was registered against the petitioner, he considered it in casual manner and this defect was not taken a serious note by the appellate authority.

Further non-application of mind is exhibited from the fact that the first offence was registered in the year 1995 and the second, which seems to be the last was registered, in the year 1996. No registered case came into existence in the years 1996 and 1997. The statements of two confidential witnesses cannot be supplemented to fill up this lacuna. If the petitioner's activities were not reported for two years, on the basis of two registered cases for which the petitioner was sufficiently booked under ordinary law, the action of externment can hardly be said to be justified.

Non-application of mind is further exhibited from the fact that chapter case No.52/98 under sections 107 and 151 of the Cr. P.C. was not considered by the externing authority. This is again in the nature of preventive action and if proved, the petitioner could have been asked to furnish surety and personal bond for keeping good behaviour for a period of one year and this could have prevented the petitioner's criminal activities. Only on the basis of one registered case in the year 1998, it cannot be apprehended that the petitioner was likely to commit such offence in future.

Branding the petitioner as a member of criminal gang is nothing but an attempt to give weight to the show cause notice as well as to the externment order, but this attempt has miserably failed. General allegations in the

show cause notice are also vague inasmuch as time and place of operation of the petitioner in the particular locality are not disclosed.

Non-consideration of defence evidence consisting of statements of five defence witnesses and 32 certificates regarding good behaviour of the petitioner has also rendered the two orders invalid. If defence evidence was produced, the authorities were bound to examine the same and they could have rejected the defence evidence by giving cogent reasons. Simply by observing that looking to the evidence of the case, it does not appear that the said submission is proper, the externing authority cannot be said to have examined the defence evidence and rejected them for cogent reasons. The externment order is thus clearly one-sided which cannot be sustained. Confirmation of this order by the appellate authority for the same reason cannot be sustained.

Externment of the petitioner from four districts Junagadh, Rajkot, Amreli and Porbandar also cannot be sustained because, without any material and cogent reasons, the order was passed. The observation that because fast means of conveyance are available, the petitioner could have operated from these districts is only subjective satisfaction of the authorities and not based upon any material that the petitioner is a member of so called gang who have any headquarters in the districts of Junagadh, Rajkot, Amreli and Porbandar.

For the reasons stated above, the show cause notice, the order of externment and the order of the appellate authority cannot be sustained. The writ petition, therefore, succeeds and is allowed. The show cause notice, the externment order and the order of the appellate authority are hereby quashed.

---